IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bal Kishan & Anr. v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION No.5167/1993
under Article 226 of the Constitution of India.

Date of Order : 16th February, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioners.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

This petition for writ is preferred by the petitioners seeking a direction to restrain Gram Panchayat chak 25-H, Tehsil Srikaranpur, District Sriganganagar from allotting the land as abadi plots in khasra No.52/1 measuring 4 bighas. A direction is further sought to cancel pattas issued as per the resolution of Gram Panchayat 25-H dated 27.8.1993.

The facts of the case, as stated in the petition, are that 20 bighas of agricultural land stood in the name of number of persons including Harichand and Pohumal. After death of above named Pohumal his son Shri Vidhyaprkash acquired rights being his legal heir. After death of Pohumal partition was also affected between various co-

tenants as a consequence of which Shri Harichand and Vidhyaprakash became the joint khatedar tenants of 20 bighas and 3 biswas of land which was marked as khasra No.52 and 52/1. After death of Shri Vidhyaprakash name of petitioner No.1 being his son was entered in the revenue record in respect to land in khasra No.52 and 52/1. It is also stated that the land measuring 8 bighas and 3 biswas under the tenancy of the petitioners is abadi and. The land measuring 4 bighas situated in khasra No.52/1 is agricultural land. According to the petitioners Administrator of the Gram Panchayat prepared a plan of khasra No.52/1 and demarcated the residential plots treating the land as a panchayat property. The Gram Panchayat chak 28-H under its resolution dated 27.8.1993 made allotment of plots in favour of five persons, namely, Gorkharam s/o Shankarram, Tharuram s/o Devaram, Ramchandra s/o Banwarilal, Pappu Singh s/o Maghar Singh and in favour of temple Ramdeoji. The allotment sought to be made under resolution dated 27.8.1993 was free of cost. As a consequence of resolution dated 27.8.1993 pattas were also issued by Gram Panchayat in favour of person concerned. The petitioners have also stated that before issuance of pattas by the Administrator of Gram Panchayat chak 25-H an application was preferred by the petitioners before the Administrator of Gram Panchayat with a request not to permit the persons to whom land was allotted to occupy the land concerned. The petitioners at the same time also

approached to the Panchayat Samiti, Srikaranpur and the Vikas Adhikari of the Panchayat Samiti, Srikaranpur passed an order dated 23.8.1993 directing the Administrator of Gram Panchayat not to take any action with regard to allotment of land from khasra No.52 and 52/1. An order to maintain status quo was also passed by Vikas Adhikari of Panchayat Samiti. The order passed by Vikas Adhikari was received by Administrator of Gram Panchayat on 24.8.1993 but in ignorance of it the Gram Panchayat adopted the resolution dated 27.8.1993 and issued pattas in pursuance of resolution referred above. The contention of the petitioners is that neither the land from which plots are sought to be allotted is agricultural land nor the procedure prescribed under the Rules 257 to 261 of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter referred to as “the Rules of 1961”) was adhered by the respondents while making allotment.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioners are having an alternative remedy under Section 61 of the Rajasthan Panchayat Raj Act, 1994 (hereinafter referred to as “the Act of 1994”) by way of filing an appeal. It is also stated in reply to the writ petition that entire land which is subject matter of present writ is shown as Gair Mumkin Abadi Land in revenue record. The respondents admitted that when resolution was taken by the Gram Panchayat with regard to

allotment of plots direction issued by Vikas Adhikari of Panchayat Samiti, Srikaranpur to maintain status quo was available. However, no reason has been given by the respondents as to why the Gram Panchayat ignored the direction given by Vikas Adhikari.

I have heard counsel for the parties.

I do not find any force in the preliminary objection with regard to maintainability of the writ petition on the ground of availability of alternative remedy under the Act of 1994. The writ petition was admitted by this Court for hearing much back in the year 1993 and no useful purpose will now be served by relegating parties to avail remedy under the Act of 1994. Beside the above, it cannot be said that a writ cannot be maintained if an alternative remedy is available. The principle of availability of alternative remedy is a rule of policy and not a rule of law. It is a self-restrainment and the court may refuse to exercise powers under Article 226 of the Constitution of India if an effective alternative remedy is available for redressal of the grievance agitated. However, it is not to be taken as the jurisdiction of the court is ousted. In the present case I do not find any reason now to relegate the petitioners to avail alternative remedy as suggested by the respondents.

The respondents admitted the fact that

at the time of issuance of pattas and even before adopting resolution dated 27.8.1993 the Gram Panchayat was aware with the directions given by Vikas Adhikari of the Panchayat Samiti to maintain status quo pertaining to the land in question. When an interim order was available with the Gram Panchayat passed by a body higher to it in administrative hierarchy, propriety demands that no decision contrary to that should be taken.

There is no dispute that Vikas Adhikari is a competent officer of the Panchayat Samiti which is a body of higher status in administrative hierarchy and an order passed by him was avialable with the Gram Panchayat while adopting the resolution dated 27.8.1993 which is in contravention of the direction given by the Vikas Adhikari. It appears that the directions were given by the Vikas Adhikari in his supervisory jurisdiction but it does not mean that the Gram Panchayat was empowered to ignore the same. The Gram Panchayat could have sought guidance from Vikas Adhikari before proceeding further in the matter.

Looking to all the facts and circumstances I consider it appropriate to direct the Gram Panchayat Chak 25-H, Tehsil Srikaranpur to reconsider its resolution dated 27.8.1993 by giving effective opportunity of hearing to the petitioners. Till a fresh decision is taken by the Gram Panchayat the pattas issued by the Gram

Panchayat in favour of persons named in resolution dated 27.8.1993 shall remain in abeyance. Entire process of reconsideration shall be completed by the Gram Panchayat within a period of six months from the date it receives certified copy of this order from the petitioners.

The writ petition is disposed of accordingly. No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.